IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 23RD JANUARY 2007 / 3RD MAGHA 1928

Crl.MC.No. 3721 of 2005()

CC.437/2003 of CHIEF JUDICIAL MAGISTRATE, KALPETTA

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PETITIONER:

PRITHVIRAJ,
PROPRIETOR, MEHTA ENTERPRISES, MERCHANTS,
BANDIPALAYA, MYSORE-570008.

BY ADV. SRI.V.V.SURENDRAN
SRI.P.A.HARISH

RESPONDENTS:

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1. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

2. FOOD INSPECTOR,
KALPETTA MUNICIPALITY, KALPETTA, WAYANAD.

BY PUBLIC PROSECUTOR SMT. LATHA.

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 23/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 3721 OF 2005

Dated this the 23rd day of January, 2007

ORDER

The petitioner has been impleaded as an accused in a pending prosecution under the Prevention of Food Adulteration Act. The Food Inspector had filed a complaint against the vendor one Hamsa. At the time of sampling or thereafter till the trial started, there was no contention that the vendor had purchased the article from the petitioner. No cash bill or receipt was produced before the Food Inspector who effected sampling. Long later, after the commencement of trial, a bill was produced by the vendor claiming to be the cash bill issued by the petitioner for the purchase of the article of food. In the course of trial, an application was made for impleadment of the petitioner under Sec.20(A) of the P.F.A. Act.

2. The petitioner entered appearance before the learned Magistrate. He prayed that the proceedings against him may be quashed. It was his contention that the bill

produced by the petitioner was issued on 8/9/95 and there has been tampering of the bill to make it appear that it was issued on 20/7/95. The Food Inspector opposed the application for impleadment and took the stand that the original accused/vendor is not protected by the plea of warantee under Sec.19 of the P.F.A. Act. No such bill was produced before the Food Inspector at the time of sampling or thereafter it was pointed out. The learned Magistrate rejected the prayer for quashing of the proceedings on the ground that the decision in **K.M. Mathew v. State of Kerala** (1992 (1) KLT 1) has been overruled by the subsequent decision in **Adalat Prasad v. Rooplal Jindal** (2004 (3) KLT 382 (SC)). The petitioner has come to this Court aggrieved by that order.

3. Certain important events have also taken place after the impleadment of the petitioner. The original accused/vendor has expired. The charge against him has abated. The learned counsel for the petitioner, in these circumstances, submits that nothing worthwhile is likely to come out of the present prosecution. The complainant does not have a case that the petitioner is guilty. The petitioner has been arrayed as accused only at the instance of the original accused/vendor. The

petitioner has a contention that the bill was forged and that the bill does not cover the article which was sold by the vendor to the Food Inspector. The prosecution is likely to lead to nothing; but unnecessary and undeserved vexation and harassment against the petitioner. In these circumstances, it is prayed that powers under Sec.482 of the Cr.P.C. may be invoked and the proceedings against the petitioner may be quashed.

4. A pointed question was put to the learned Public Prosecutor and the learned Public Prosecutor submits that the complainant has no allegation even that the petitioner is responsible for the offence committed. The complainant has no evidence to be adduced against the petitioner, it is categorically stipulated.

5. I am, in these circumstances, of opinion that there is force in the contention of the petitioner that the proceedings against him are liable to be quashed. In the total absence of any allegation for the complainant that the petitioner has committed any offence and the 1st accused who raised such allegations having already expired and the charge against him having abated, I find that nothing fruitful or effective is likely to

come out of the continuance of the prosecution. I am persuaded to invoke the extraordinary inherent jurisdiction under Sec.482 of the Cr.P.C. to bring to premature termination the surviving prosecution against the petitioner.

6. This Crl.M.C. is, accordingly, allowed. C.C.No.437/03 before the learned Chief Judicial Magistrate, Kalpetta, against the petitioner is quashed.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge